IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.878 of 2000

1. The State of Tamilnadu
   rep. By Secretary to Government
   Home (Cinema) Department
   Chennai-9.

2. The Deputy Commercial Tax Officer
   Thirumangalam
   Madurai District. .. Appellants

Vs.

Kannan Talkies, rep. by its
Licensee, Usilampatti
Madurai District. .. Respondent

Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 15.10.1998 made in W.P.No.15868 of 1990 This writ of certiorified mandamus, calling for the records of the second respondent made in Roc.No.3392/87/B5 dated 27.7.87 and of the Government Letter No.30076/U-1/87-1 Commercial Taxes, and Religious endowments Department dated 29.8.90 and quash the same.

For Appellants : Mr.Haja Nazirudeen
Spl.Government Pleader (Taxes)
For Respondent : Mr.A.Jenasenan

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J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The appeal is directed against the order dated 15.10.1998 made in W.P.No.15868 of 1990 quashing the proceedings dated 27.7.1987, in and by which the second appellant demanded the short levy of entertainment tax under the provisions of the Tamil Nadu Entertainment Tax Act, 1939 (for brevity, "the Act").

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2. For the purpose of convenience, the parties are arrayed as per their rank in the writ petition.

3. The second respondent passed the impugned proceedings dated 27.7.1987 as the petitioner-theatre did not obtain prior permission from the licensing authority for reduction in the rate of admission to the petitioner-theatre.

4. According to the petitioner, the theatre had opted to pay entertainment tax under Section 5-B of the Act based on gross collection capacity and therefore, the second respondent has no power to reassess the tax due invoking Section 7-B of the Act, which empowers the authorities to reassess only if the payment for admission to any entertainment escaped assessment. It was also submitted that as there was no payment for admission escaping assessment, the authorities ought not have invoked Section 7-B of the Act for passing the impugned order.

5. Per contra, the learned counsel for the respondents placing reliance on the Government letter No.30076/C1/ 87-1 CT & RE Department, dated 29.8.1990, which is also challenged in the writ petition, contended that the petitioner-theatre ought not to have reduced the admission fee without prior permission of the licensing authority and such failure to obtain prior permission for reducing the admission fee has empowered the authorities to invoke Section 7-B of the Act for passing the assessment order for collecting the short levy of tax due to the Government, even though the theatre has opted for payment of tax on gross collection capacity under Section 5-B of the Act.

6. While the question was as to the power of the second respondent to pass the impugned order, what was contested before the learned Single Judge was whether the reassessment proceedings demanding tax due from the petitioner by the second respondent amounts to a penalty and if the same is penalty, whether the authorities have taken into consideration the petitioner's previous conduct, viz., whether the petitioner is free from punishments or is an habitual offender, and consequently, the learned Single Judge, by order dated 15.10.1998 made in W.P.No.15868 of 1990, rendering a finding that the writ petitioner's previous service and conduct are free from any punishments, quashed the impugned order, which necessitated the Revenue to prefer the above appeal.

7. The power to reassess conferred on the authorities under Section 7-B of the Act, even in the case of theatres which are governed under Section 5-B of the Act is well settled. Whether the power of assessment under Section 7-B of the Act, can be exercised to make best of judgment assessment, in a case, where tax payable either under section 5-A or 5-B of the Act, has escaped assessment, came up for consideration before a Division Bench of this Court in the case

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of ***ANNAMALAI v. ASSISTANT COMMISSIONER (CT), [1990] 76 STC 271***, in which it was held as under:

> "The effect of sub-section (3) of Section 5-C of the Tamil Nadu Entertainments Tax Act, 1939, is that all provisions of the Act except sections 4, 4-A, 4-B, 4-C, 6 and 7 and the rules made thereunder, applicable in the case of a tax payable under Section 4-A of the Act can be invoked in the case of a tax payable under section 5-A or 5-B. Section 7-B of the Act expressly refers to the power to make a best of judgment assessment where the tax which the cinematograph exhibitor is liable to pay under Section 4-A has escaped assessment. ***Therefore, by virtue of Section 5-C(3) the power of assessment under Section 7-B can also be exercised to make a best judgment assessment in a case where the tax payable either under section 5-A or 5-B has escaped assessment.***"
>
> (emphasis supplied)

8. In view of the above settled proposition, we are convinced that the petitioner is not entitled to contend that the second respondent has no authority and jurisdiction to pass the impugned order dated 27.7.1987.

9. At this juncture, Mr.Jenasenan, learned counsel for the petitioner invited our attention to the fact that the petitioner has already preferred an appeal against the impugned order dated 27.7.1987 as provided under Rule 49(1) of the Tamil Nadu Entertainments Tax Rules, 1939 and the Appellate Authority has to consider the said appeal on merits taking into consideration the other relevant facts and decide whether the assessment order is based on materials.

10. Mr.Haja Nazirudeen, learned Special Government Pleader (Taxes) appearing for the Revenue is not in a position to say whether the appeal preferred by the petitioner has been disposed of or not.

11. Under such circumstances, suffice it to pass the following order:

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(i) The order of the learned Single Judge dated 15.10.1998 made in W.P.No.15868 of 1990 is set aside;

(ii) the second respondent has power to pass the order of reassessment under Section 7-B of the Act under the facts and circumstances of the case;

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(iii)as to the quantum of the tax payable by the petitioner, the petitioner is at liberty to submit a copy of the appeal grounds within thirty days from the date of receipt of copy of this order, of course raising additional grounds, if they are so advised, and the appellate authority shall, after hearing the petitioner, dispose of the appeal preferred by the petitioner against the impugned order dated 27.7.1987 within ninety days from the date of filing of the appeal grounds; and

(iv)if the petitioner is still aggrieved by any such order to be passed by the appellate authority, the petitioner is at liberty to work out their rights in the manner known to law.

This writ appeal is allowed with the above directions. No costs.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The Secretary to Government
   Home (Cinema) Department
   State of Tamilnadu
   Chennai-9.

2. The Deputy Commercial Tax Officer
   Thirumangalam
   Madurai District.

1 C.C. to Special Government Pleader, SR.No.21368

1 C.C. to Mr. A. Jenasenan, Advocate Sr. No. 21352.

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